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OLC 74-2308

31 October 1974

S4016
SJR 240
S Res 399

MEMORANDUM FOR THE RECORD

SUBJECT: Approaches to Watergate Disclosure and Public Possession
of Watergate-related Documents

1. The Senate has considered a trilogy of bills or resolutions, each reflecting a different approach to deal with protection of and disclosure of Watergate-related materials in the Executive branch. Two have been passed by the Senate, and the other was "indefinitely postponed;" none have yet been acted on by the House. These measures were proposed in line with a general desire to inform the American people of the facts of the Watergate incident and cover-up, and in specific response to the 6 September 1974 agreement between Mr. Nixon and Arthur Simpson, Administrator of General Services, covering the disposition of the Presidential materials.

2. The three Senate measures are the following:

passed (a) S. Res. 399: Urges President Ford to assure public access to all facts related to Watergate matters and the fruits of all investigations conducted pursuant thereto. Further, except in cases clearly vital to the national security, the President is urged to afford Americans full access to all Watergate-related papers, documents, memoranda, tapes, and transcripts originating at anytime during 20 January 1969 - 9 August 1974.

Status: Introduced by Senators Mansfield, Robert Byrd, Javits, Mathias, and Schweiker on 11 September 1974. Reported on 26 September 1974 by the Committee on Government Operations. Passed Senate 3 October, over light Republican opposition.

Effect on CIA: S. Res. 399 does not have the force of law; it is merely a "sense of the Senate" resolution. Hence, it will, by itself, have no effect on CIA unless it influences the President to voluntarily order the release of CIA documents on the Watergate incident. Perhaps we should check with someone at the White House to see if the President is considering such an action.

Skidmore, said to call Jack Marsh at W.H.

CRC, 8/26/2003

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(b) S. 4016: Notwithstanding any other agreement or understanding, any Federal employee in possession shall deliver to the Administrator of General Services, for his complete possession and control, all original tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which--

(1) involve former President Richard M. Nixon and/or other individuals who, at the time of the conversation, were employed by the Federal Government;

(2) were recorded in the White House or in the office of the President in the Executive Officer Building located in Washington, D. C.; Camp David, Maryland; Key Biscayne, Florida; San Clemente, California; and

(3) were recorded between January 20, 1969, and August 9, 1974, inclusive.

Sec. 2(b): Notwithstanding any other agreement or understanding, the Administrator of GSA shall receive and retain or make reasonable efforts to receive or retain complete possession and control of all papers, documents, memoranda, and transcripts which constitute the Presidential historical materials of Richard M. Nixon as defined in section 2101 of title 44, U.S.C.

Sec. 3(a): None of the above materials shall be destroyed except as provided by Congress.

(b): These materials shall be made available for use in any judicial proceeding.

(c): Richard Nixon, or his designee, shall at all times have access to these materials.

Sec. 4: If a Federal court determines that the provisions of this Act have deprived any person of private property without just compensation, then the Treasury shall pay whatever amount is determined to be just compensation.

Sec. 5: GSA shall issue regulations to govern access to the materials, taking into account the need to provide the public with the full truth of the Watergate incident.

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Status: Introduced 18 September 1974 by Senators Nelson, Ervin, and Javits. Reported by Committee on Government Operations without hearings 26 September 1974. Passed Senate 4 October, over heated Republican opposition, led by Senator Hruska. Referred to House Committee on House Administration 7 October.

Effect of CIA: S. 4016, which would have the force of law, is aimed primarily at insuring Federal government possession of the Nixon tapes and documents. The Agency would only be affected if our materials were ruled "the Presidential historical materials of Richard M. Nixon," as defined in 44 U.S.C. 2101. If they were, the materials would have to be turned over to the Administrator of General Services for his possession, to be released according to regulations he develops. I have asked OGC for a determination on whether any of our materials could be considered "historical materials" under section 2101 of title 44, U.S.C.

(c) S. J. Res. 240: The President shall assure full public access to all facts connected with and relating to Watergate matters and the fruits of all investigations conducted pursuant thereto. Except in cases clearly vital to the national security, President shall afford the American public full access to all such papers, documents, memoranda, tapes, and transcripts originating between 20 January 1969 and 9 August 1974. President shall not grant access to any materials if Office of Special Prosecutor or a court of competent jurisdiction determines that disclosure is likely to impair or prejudice an individual's right to a fair trial.

Status: Reported from Government Operations on 26 September 1974 with recommendation of passage. The bill was to be considered immediately after S. 4016 on 4 October, but Senator Hruska won Senator Mansfield's agreement to postpone consideration indefinitely. According to Doug Marvin, Senator Hruska's staff man, the joint resolution will not be considered this Congress.

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Effect on CIA: S. J. Res. 240 would have the greatest impact on the Agency. If enacted, the resolution would require the President to disclose all materials on Watergate, unless withholding them was "clearly vital to the national security interests of the United States." This standard of protection appears to be quite stringent, and it may not cover all Agency materials which warrant protection. If this resolution is introduced again next Congress, the Agency must watch it closely.

25X1A

Assistant Legislative Counsel

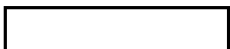
Attachments: (Copies of legislation)

Distribution:

Orig - Subject

1 - OGC

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JOURNAL

OFFICE OF LEGISLATIVE COUNSEL

Wednesday - 30 October 1974

25X1 [REDACTED]

25X1 1. [REDACTED] Called Doug Marvin on the staff of Senator Roman L. Hruska (R., Neb.) regarding Senator Mike Mansfield's (D., Mont.) statement in the Congressional Record of October 4th that Senate ~~✓~~consideration of S. J. Res. 240, relating to the release of Watergate-related materials, was to be indefinitely postponed. Senator Mansfield stated that this was pursuant to an agreement with Senator Hruska. Marvin said the agreement between the Senators was that S. J. Res. 240 would not be brought up on the floor of the Senate this Congress.

25X1 2. [REDACTED] Jim Oliver, OMB, called and asked if we knew anything about an Inter-agency committee scheduled to meet ~~✓~~today to discuss legislative oversight of the Agency explaining that he would be interested in sitting in on the session. I told Oliver I had no such information and in response to my query, he said he was unaware of OMB's position on the matter.

25X1 3. [REDACTED] Greg Rushford, Legislative Assistant to Representative Clarence D. Long (D., Md.), called again on his request for information on the Persian Gulf saying Representative Long wants him to receive the information and that he has many questions to ask us. I asked if he had tried the Library of Congress, which he said he had with meager results. Again I made it clear we would see what we could do but that I was not optimistic and I would let him know in a few days.

25X1 4. [REDACTED] Met with Chairman Lucien N. Nedzi (D., Mich.), Intelligence Subcommittee, House Armed Services Committee, and discussed several matters with him. See Memorandum for the Record.

25X1 5. [REDACTED] Made an appointment to meet with Jim Calloway, Chief Counsel and Staff Director, Senate Appropriations Committee 25X1 tomorrow. Calloway was tied up in meetings that will be continuing through the evening.

25X1 [REDACTED]

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[REDACTED]

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25X1 [redacted]
25X1 6. [redacted] Met with Frank Slatinshek, Chief Counsel, House Armed Services Committee, and reviewed with him the several items of conversation with Chairman Lucien N. Nedzi (D., Mich.), Intelligence Subcommittee, House Armed Services Committee. Slatinshek gave me two New York Times articles, one by Barry M. Blechman and Stephanie E. Levinson entitled, "U.S. Policy and Soviet Subs" and the other by Seymour M. Hersh entitled, "CIA Said to Have Asked Funds for Chile Rightists in 1973" and asked for our comments on them.

25X1A [redacted] OCI, has been advised.

25X1 7. [redacted] I met with Keith F. Mainland, Clerk and Staff Director, House Appropriations Committee, and discussed with him the matter of the Clark tapes and the GAO request for regular distribution of the EIW. As to the latter item, see Memorandum for the Record.

I also discussed with Mainland the request from Greg Rushford, Legislative Assistant to Representative Clarence D. Long (D., Md.), concerning his request for briefings and background information on the Persian Gulf and told him that we intended to politely but firmly refuse the request. He had no question.

25X1 8. [redacted] Received a call from Jody Cornwell, from the office of Senator Bob Packwood (R., Or.), requesting the whereabouts
25X1A [redacted] an old school-friend of hers, who had told her he worked for the Agency. After checking with Personnel, I called Ms. Cornwell back and told her we had no record of him.

9. (Unclassified - RJK) Neil Livingston, on the staff of the

STATSPB [redacted]
Livingston's attention.

25X1 [redacted] 25X1A
Acting Legislative Counsel

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25X1A cc:
O/DDCI
Ex. Sec.

Mr. Warner
Mr. Thuermer
EA/DDO DDI DDA DDS&T Comptroller
25X1A
Approved For Release 2004/03/11 : CIA-RDP76M00527R000700170015-0